

CALIFORNIA CODE OF REGULATIONS

TITLE 5. EDUCATION

DIVISION 1. CALIFORNIA DEPARTMENT OF EDUCATION

CHAPTER 5.1. UNIFORM COMPLAINT PROCEDURES

Subchapter 1. Complaint Procedures

Article 1. Definitions

4600. General Definitions.

As used in this chapter, the term:

- (a) "Appeal" means a request made in writing to a level higher than the original reviewing level by an aggrieved party requesting reconsideration or a reinvestigation of the lower adjudicating body's decision.
- (b) "Beginning of the year or semester" means the first day classes necessary to serve all the students enrolled are established with a single designated certificated employee assigned for the duration of the class, but not later than 20 working days after the first day students attend classes for that semester.
- (c) "Complainant" means any individual, including a person's duly authorized representative or an interested third party, public agency, or organization who files a written complaint alleging violation of federal or state laws or regulations, including allegations of unlawful discrimination in programs and activities funded directly by the state or receiving any financial assistance from the state.
- (d) "Complaint" means a written and signed statement alleging a violation of federal or state laws or regulations, which may include an allegation of unlawful discrimination. If the complainant is unable to put the complaint in writing, due to conditions such as a disability or illiteracy, the public agency shall assist the complainant in the filing of the complaint.
- (e) "Complaint investigation" means an administrative process used by the Department or local educational agency for the purpose of gathering data regarding the complaint.
- (f) "Complaint procedure" means an internal process used by the Department or local educational agency to process and resolve complaints.
- (g) "Days" means calendar days unless designated otherwise.
- (h) "Department" means the California Department of Education.
- (i) "Direct state intervention" means the steps taken by the Department to initially investigate complaints or effect compliance.
- (j) "Educational institution" means a public or private preschool, elementary, or secondary school or institution, the governing board of a school district, or any combination of school districts or counties recognized as the administrative agency for public elementary or secondary schools.
- (k) "Facilities that pose an emergency or urgent threat to the health or safety of pupils or staff" means a condition as defined in paragraph (1) of subdivision (c) of Section 17592.72 and any other emergency conditions the school district determines appropriate.

- (l) “Good repair” means the facility is maintained in a manner that assures that it is clean, safe, and functional as determined pursuant to an interim evaluation instrument developed by the Office of Public School Construction pursuant to Education Code Section 17002(d)(2), and is available from the Department of General Services, Office of Public School Construction.
- (m) “Instructional materials” means all materials that are designed for use by pupils and their teachers as a learning resource and help pupils to acquire facts, skills, or opinions or to develop cognitive processes. Instructional materials may be printed or nonprinted, and may include textbooks, technology-based materials, other educational materials, and tests.
- (n) “Local agency” means a school district governing board or a local public or private agency which receives direct or indirect funding or any other financial assistance from the state to provide any school programs or activities or special education or related services.
- (o) “Local educational agency” (LEA) includes any public school district and county office of education or direct-funded charter school.
- (p) “Mediation” means a problem solving activity whereby a third party assists the parties to the dispute in resolving the complaint.
- (q) “Misassignment” means the placement of a certificated employee in a teaching or services position for which the employee does not hold a legally recognized certificate or credential or the placement of a certificated employee in a teaching or services position that the employee is not otherwise authorized by statute to hold.
- (r) “Public agency” means any local agency or state agency.
- (s) “State agency” means the State Departments of Mental Health or Health Services or any other state administrative unit that is or may be required to provide special education or related services to children with disabilities pursuant to Government Code Section 7570 et seq.
- (t) “State mediation agreement” means a written, voluntary agreement approved by the Department, which is developed by the parties to the dispute, which resolves the allegations of the complaint.
- (u) “Subject matter competency” means the teacher meets the applicable requirements of Chapter 6, Article 1, Subchapter 7 of these regulations, commencing with Section 6100, for the course being taught.
- (v) “Sufficient textbooks or instructional materials” means that each pupil, including English learners, has a textbook or instructional materials, or both, to use in class and to take home but does not require two sets of textbooks or instructional materials for each pupil. Sufficient textbooks or instructional materials does not include photocopied sheets from only a portion of a textbook or instructional materials copied to address a shortage.
- (w) “Superintendent” means the Superintendent of Public Instruction or his or her designee.
- (x) “Teacher vacancy” means a position to which a single designated certificated employee has not been assigned at the beginning of the year for an entire year or, if the position is for a one-semester course, a position of which a single designated certificated employee has not been assigned at the beginning of a semester for an entire semester.

[Authority cited: Sections 221.1 and 33031, Education Code; and Section 11138, Government Code.] [Reference: Sections 200, 201, 210.1, 220, 17002(d), 17592.72, 33126(b)(5)(A) and (B) and 60010, Education Code; and Sections 11135 and 11138, Government Code.]

4610. Purpose and Scope.

- (a) This Chapter applies to the filing, investigation and resolution of a complaint regarding an alleged violation by a local agency of federal or state law or regulations governing educational programs, including allegations of unlawful discrimination. The purpose of this chapter is to establish a uniform system of complaint processing for specified programs or activities that receive state or federal funding.
- (b) This chapter applies to the following programs administered by the Department:
 - (1) Adult Education programs established pursuant to Education Code Sections 8500 through 8538 and 52500 through 52616.4;
 - (2) Consolidated Categorical Aid Programs as listed in Education Code Section 64000(a);
 - (3) Migrant Education established pursuant to Education Code Sections 54440 through 54445;
 - (4) Career Technical and Technical Education and Career Technical and Technical Training Programs established pursuant to Education Code Sections 52300 through 52480;
 - (5) Child Care and Development Programs established pursuant to Education Code Sections 8200 through 8493;
 - (6) Child Nutrition Programs established pursuant to Education Code Sections 49490 through 49570; and
 - (7) Special Education Programs established pursuant to Education Code Sections 56000 through 56885 and 59000 through 59300.
- (c) This chapter also applies to the filing of complaints which allege unlawful discrimination against any protected group as identified under Education Code Section 200 and 220 and Government Code Section 11135, including actual or perceived sex, sexual orientation, gender, ethnic group identification, race, ancestry, national origin, religion, color, or mental or physical disability, or age, or on the basis of a person's association with a person or group with one or more of these actual or perceived characteristics, in any program or activity conducted by a local agency, which is funded directly by, or that receives or benefits from any state financial assistance.
- (d) Nothing in these regulations shall prevent a local educational agency from using its local uniform complaint procedure to address complaints not listed in this section.
- (e) The Department will develop a pamphlet for parents that will explain the Uniform Complaint Procedures in a user-friendly manner and post this pamphlet on the Department's Web site.

[Authority cited: Sections 221.1, 8261, 33031, 49531, 49551, 54445, 52355, 52451, and 56100(a) and (j), Education Code; and Section 11138, Government Code.]
[Reference: Sections 200, 220, 260, and 49556, Education Code; Sections 11135 and 11138, Government Code; and 34 CFR 106.1-106.8 and 299.10-299.11.]

4611. Referring Complaint Issues to Other Appropriate State or Federal Agencies. The following complaints shall be referred to the specified agencies for appropriate resolution and are not subject to the local and Department complaint procedures set forth in this chapter unless these procedures are made applicable by separate interagency agreements:

- (a) Allegations of child abuse shall be referred to the applicable County Department of Social Services (DSS), Protective Services Division or appropriate law enforcement agency. However, nothing in this section relieves the Department from investigating complaints pursuant to Section 4650(a)(8)(C) herein.
- (b) Health and safety complaints regarding a Child Development Program shall be referred to Department of Social Services for licensed facilities, and to the appropriate Child Development regional administrator for licensing-exempt facilities.
- (c) Employment discrimination complaints shall be sent to the State Department of Fair Employment and Housing (DFEH) pursuant to Title 22, CCR, Section 98410. The complainant shall be notified by first class mail of any DFEH transferal.
- (d) Allegations of fraud shall be referred to the responsible Department Division Director who may consult with the Department's Legal and Audits Branch.

[Authority cited: Sections 221.1 and 33031, Education Code; and Section 11138, Government Code.] [Reference: Sections 200, 220 and 48987, Education Code; Sections 11135, 11136, 11138 and 12960, Government Code; Section 11166, Penal Code; and 34 CFR 106.1-106.8.]

Article 3. Local Educational Agency Compliance

4620. Local Educational Agency Responsibilities.

Each local educational agency shall have the primary responsibility to insure compliance with applicable state and federal laws and regulations. Each local educational agency shall investigate complaints alleging failure to comply with applicable state and federal laws and regulations and/or alleging discrimination, and seek to resolve those complaints in accordance with the procedures set out in this chapter and in accordance with the policies and procedures of the governing board.

[Authority cited: Sections 221.1 and 33031, Education Code; and Section 11138, Government Code.] [Reference: Section 200, 220 and 260, Education Code; Section 11135, Government Code; and 34 CFR 106.8.]

4621. District Policies and Procedures.

- (a) Each local educational agency shall adopt policies and procedures not inconsistent with Sections 4600-4695 of this chapter for the investigation and resolution of complaints. Local policies shall ensure that complainants are protected from retaliation and that the identity of a complainant alleging discrimination remain confidential as appropriate. School Districts and County Offices of Education shall submit their policies and procedures to the local governing board for adoption.
- (b) Each local educational agency shall include in its policies and procedures the person(s), employee(s) or agency position(s) or unit(s) responsible for receiving complaints, investigating complaints and ensuring local educational agency compliance. The local educational agency's policies shall ensure that the person(s),

employee(s), position(s) or unit(s) responsible for compliance and/or investigations shall be knowledgeable about the laws/programs that he/she is assigned to investigate.

- (c) Except for complaints under Sections 4680-4687 regarding instructional materials, emergency or urgent facilities conditions that pose a threat to the health or safety of pupils or staff, and teacher vacancies or misassignments, the local educational agency may provide a complaint form for persons wishing to file a complaint to fill out and file. A complaint form shall be provided for complaints regarding instructional materials, emergency or urgent facilities conditions that pose a threat to the health or safety of pupils or staff, and teacher vacancies or misassignments. However, a person is not required to use the complaint form furnished by the local educational agency in order to file a complaint.

[Authority cited: Sections 221.1 and 33031, Education Code; and Section 11138, Government Code.] [Reference: Sections 200, 220 and 260, Education Code; Section 11135, Government Code; and 34 CFR 106.8 and 299.10-299.11.]

4622. Notice.

Each local educational agency shall annually notify in writing, as applicable, its students, employees, parents or guardians of its students, the district advisory committee, school advisory committees, appropriate private school officials or representatives, and other interested parties of their local educational agency complaint procedures, including the opportunity to appeal to the Department and the provisions of this chapter. The notice shall include the identity (identities) of the person(s) responsible for processing complaints. The notice shall also advise the recipient of any civil law remedies that may be available under state or federal discrimination laws, if applicable, and of the appeal pursuant to Education Code Section 262.3. This notice shall be in English, and when necessary, in the primary language, pursuant to Section 48985 of the Education Code, or mode of communication of the recipient of the notice. Copies of local educational agency complaint procedures shall be available free of charge.

[Authority cited: Sections 200, 220, 221.1, 262.3 and 33031, Education Code; and Section 11138, Government Code.] [Reference: Sections 200 and 220, Education Code; Sections 11135 and 11138, Government Code; and 34 CFR 106.8 and 299.11.]

Article 4. Local Complaint Procedures

4630. Filing A Local Complaint; Procedures; Time Lines.

- (a) Except for complaints under Sections 4680-4687 regarding instructional materials, emergency or urgent facilities conditions that pose a threat to the health or safety of pupils or staff, and teacher vacancies or misassignments, and complaints that allege discrimination, any individual, public agency or organization may file a written complaint with the district superintendent or his or her designee alleging a matter which, if true, would constitute a violation by that local educational agency of federal or state law or regulation governing a program listed in Section 4610(b) of this chapter.
- (b) An investigation of alleged unlawful discrimination shall be initiated by filing a complaint not later than six months from the date the alleged discrimination

occurred, or the date the complainant first obtained knowledge of the facts of the alleged discrimination unless the time for filing is extended by the district superintendent or his or her designee, upon written request by the complainant setting forth the reasons for the extension. Such extension by the district superintendent or his or her designee shall be made in writing. The period for filing may be extended by the district superintendent or his or her designee for good cause for a period not to exceed 90 days following the expiration of the six month time period. The district superintendent shall respond immediately upon a receipt of a request for extension.

- (1) The complaint shall be filed by one who alleges that he or she has personally suffered unlawful discrimination, or by one who believes an individual or any specific class of individuals has been subjected to discrimination prohibited by this part.
- (2) The complaint shall be filed with the local educational agency in accordance with the complaint procedures of the local educational agency.
- (3) An investigation of a discrimination complaint shall be conducted in a manner that protects confidentiality of the parties and maintains the integrity of the process.

[Authority cited: Sections 221.1 and 33031, Education Code; and Section 11138, Government Code.] [Reference: Sections 200 and 220, Education Code; Sections 11135, 11136, and 11138, Government Code; and 34 CFR 106.8.]

4631. Responsibilities of the Local Educational Agency.

- (a) Except for complaints regarding instructional materials, emergency or urgent facilities conditions that pose a threat to the health or safety of pupils or staff, and teacher vacancies or misassignments, which must be processed in accordance with Sections 4680-4687, within 60 days from the date of the receipt of the complaint, the local educational agency person responsible for the investigation of the complaints or his or her designee shall conduct and complete an investigation of the complaint in accordance with the local procedures adopted pursuant to Section 4621 and prepare a written Local Educational Agency Decision. This time period may be extended by written agreement of the complainant.
- (b) The investigation shall include an opportunity for the complainant, or the complainant's representative, or both, to present the complaint(s) and evidence or information leading to evidence to support the allegations of non-compliance with state and federal laws and/or regulations.
- (c) Refusal by the complainant to provide the investigator with documents or other evidence related to the allegations in the complaint, or to otherwise fail or refuse to cooperate in the investigation or engage in any other obstruction of the investigation, may result in the dismissal of the complaint because of a lack of evidence to support the allegations.
- (d) Refusal by the local agency to provide the investigator with access to records and/or other information related to the allegation in the complaint, or to otherwise fail or refuse to cooperate in the investigation or engage in any other obstruction of the investigation, may result in a finding based on evidence collected that a violation has occurred and may result in the imposition of a remedy in favor of the complainant.

- (e) The local educational agency should issue a Decision (the Decision) based on the evidence. The Decision shall be in writing and sent to the complainant within 60 days from receipt of the complaint by the local educational agency. The Decision should contain:
 - (1) the findings of fact based on the evidence gathered,
 - (2) conclusion of law,
 - (3) disposition of the complaint,
 - (4) the rationale for such disposition,
 - (5) corrective actions, if any are warranted,
 - (6) notice of the complainant's right to appeal the local educational agency Decision to the Department, and
 - (7) procedures to be followed for initiating an appeal to the Department.
- (f) Nothing in this chapter shall prohibit the parties from utilizing alternative methods to resolve the allegations in the complaint, including, but not limited to, mediation.
- (g) Nothing in this chapter shall prohibit a local educational agency from resolving complaints prior to the formal filing of a written complaint.

[Authority cited: Sections 221.1 and 33031, Education Code; and Section 11138, Government Code.] [Reference: Sections 200 and 220, Education Code; Sections 11135, 11136, and 11138, Government Code; and 34 CFR 106.8.]

Article 4.5. Appeal of Local Educational Agency Decision

4632. Appeal of Local Educational Agency Decision – Grounds.

- (a) Except for complaints under Sections 4681 and 4682 regarding instructional materials and teacher vacancies or misassignments, a complainant may appeal a Decision to the Department by filing a written appeal within 15 days of receiving the Decision.
- (b) The complainant shall specify the basis for the appeal of the Decision and whether the facts are incorrect and/or the law is misapplied.
- (c) The appeal shall be accompanied by:
 - (1) a copy of the locally filed complaint; and
 - (2) a copy of the Decision.
- (d) If the Department determines the appeal raises issues not contained in the local complaint, the Department will refer those new issues back to the local educational agency for resolution as a new complaint under Section 4630 or 4631.
- (e) If the Department determines that the Decision failed to address an issue raised by the complaint, the Department shall refer the matter to the local educational agency to make the necessary findings and conclusions on any issue not addressed. The local educational agency will address the issue within 20 days from the date of the referral.

[Authority cited: Sections 200, 221.1 and 33031, Education Code; and Section 11138, Government Code.] [Reference: Sections 11135, 11136 and 11138, Government Code; 34 CFR 106.8; and 34 CFR 299.10(a)(2).]

4633 Appeal of Local Educational Agency Decision.

- (a) If the Decision is appealed, the Department shall notify the local educational agency of the appeal. Upon notification by the Department that the Decision has been appealed, the local educational agency shall forward the following to the Department:
 - (1) A copy of the original complaint;
 - (2) A copy of the Decision;
 - (3) A summary of the nature and extent of the investigation conducted by the local educational agency, if not covered in the Decision;
 - (4) A copy of the investigation file, including but not limited to, all notes, interviews and documents submitted by the parties or gathered by the investigator;
 - (5) A report of any action taken to resolve the complaint;
 - (6) A copy of the local educational agency complaint procedures; and
 - (7) Such other relevant information as the Department may request.
- (b) The Department shall not receive evidence from the parties that could have been presented to the local educational agency investigator during the investigation, unless requested by the Department. Any confidential information or pupil information in the investigative file shall remain confidential and shall not be disclosed by the Department.
- (c) The Department may contact the parties for further information, if necessary.
- (d) The Department shall review the investigation file, the summary of the nature and extent of the investigation conducted by the local educational agency, the complaint procedures, documents and any other evidence received from the local educational agency and determine whether substantial evidence exists:
 - (1) That the local educational agency followed its complaint procedures; and
 - (2) That the relevant findings of fact in the Decision which are the subject of the appeal are supported by the evidence.
- (e) The Department shall review the conclusions of law which are the subject of the appeal and determine whether they are correct.
- (f) If the Department determines that the Decision is deficient because it lacks findings of fact and conclusions of law regarding the subject of the appeal, the Department may return the Decision to the local educational agency in order to correct the deficiencies within 20 days of the return.
- (g) If the Department finds that the Decision is supported by substantial evidence, and that the legal conclusions are not contrary to law, the appeal shall be denied.
- (h) If the Department finds the grounds for the appeal have merit:
 - (1) The Department may, if there is lack of substantial evidence or a procedural defect in the investigation, remand the investigation to the local educational agency for further investigation of the allegations which are the subject of the appeal; or
 - (2) The Department may issue a decision based on the evidence in the investigation file received from the local educational agency; or
 - (3) If the Department determines that it is in the best interest of the parties, conduct a further investigation of allegations which are the basis for the appeal and issue a decision following further investigation.
- (i) If the Department finds merit in the appeal, the Department's decision on appeal shall contain the following:

- (1) A finding that the local educational agency complied or did not comply with its complaint procedures;
- (2) The Department's findings of fact and conclusions of law regarding the issue on appeal; and
- (3) Where a determination is made that the local educational agency failed to comply with the applicable state or federal law or regulation, remedial orders and/or required actions to address the violation(s).

[Authority cited: Sections 221.1 and 33031; and Section 11138, Government Code.]
 [Reference: Sections 200 and 220, Education Code; Sections 11135, 11136 and 11138, Government Code; 34 CFR 106.8; and 34 CFR 299.10(a)(2).]

Article 5. State Complaint Procedures

4640. Filing a State Complaint That Has Not First Been Filed at the Local Educational Agency; Time Lines, Notice, Appeal Rights.

Referral to the Local Educational Agency for Local Resolution.

- (a) If a complaint is erroneously filed with the Department without first being filed with and investigated by the local educational agency, the Department shall immediately forward the complaint to the local educational agency for processing in accordance with Article 4 of this chapter, unless extraordinary circumstances exist necessitating direct state intervention as described at Section 4650.
- (b) A letter shall be sent by first class mail to the complainant(s) notifying him, her, or them that:
 - (1) The Department does not have jurisdiction, at this time, over the complaint and that the complaint should have been filed with the local educational agency in the first instance;
 - (2) That the complaint has been transferred to the local educational agency requesting the local educational agency to process and investigate the allegation in the complaint; and
 - (3) That the complainant may file an appeal to the Department following the issuance of the Decision, if he or she believes as a matter of fact or law the Decision is incorrect.

[Authority cited: Sections 221.1 and 33031, Education Code; and Section 11138, Government Code.] [Reference: Sections 200 and 220, Education Code; Sections 11135, 11136, and 11138, Government Code; 34 CFR 106.8; and 34 CFR 299.10(a)(2).]

Article 6. Direct State Intervention

4650. Basis of Direct State Intervention.

- (a) Except for complaints under Sections 4680, 4681, 4682 and 4683 regarding instructional materials, teacher vacancies or misassignments, and condition of a facility, the Department shall directly intervene without waiting for local educational agency investigation if one or more of the following situations exist:
 - (1) The complaint includes an allegation, and the Department verifies, that a local educational agency failed to comply with the complaint procedures required by

this Chapter and its local rules and regulations, including, but not limited to, the failure or refusal of the local educational agency to cooperate with the investigation;

- (2) The complaint relates to an agency that is not a local educational agency funded through the Child Development or Child Nutrition Programs;
- (3) The complainant requests anonymity because he or she would be in danger of retaliation and would suffer immediate and irreparable harm if he or she filed a complaint with the local educational agency;
- (4) The complainant alleges that the local educational agency failed or refused to implement the final decision resulting from its local investigation or local mediation agreement;
- (5) The complainant alleges and the Department verifies that through no fault of the complainant, no action has been taken by the local educational agency within 60 calendar days of the date the complaint was filed. Prior to direct intervention, the Department shall attempt to work with the local educational agency to allow it to complete the investigation and issue a Decision.
- (6) The complainant alleges and the Department verifies that he or she would suffer immediate and irreparable harm as a result of an application of a district-wide policy that is in conflict with state or federal law covered by this Chapter, and that filing a complaint with the local educational agency would be futile.
- (7) For complaints relating to special education, any one of the following shall be a condition for direct state intervention:
 - (A) The complainant alleges that a public agency, other than a local educational agency, as specified in Government Code Section 7570 et seq., fails or refuses to comply with an applicable law or regulation relating to the provision of free appropriate public education to individuals with disabilities;
 - (B) The complainant alleges that the local educational agency or public agency fails or refuses to comply with the due process procedures established pursuant to federal and state law and regulation; or has failed or refused to implement a due process hearing order;
 - (C) The complainant alleges facts that indicate that the child or group of children may be in immediate physical danger or that the health, safety or welfare of a child or group of children is threatened.
 - (D) The complainant alleges that an individual with a disability is not receiving the special education or related services specified in his or her individualized educational program (IEP).
 - (E) The complaint involves a violation of federal law governing special education, 20 U.S.C. Section 1400 et seq., or its implementing regulations.
- (b) The complaint shall identify the basis, as described in subdivision (a) above, for filing the complaint directly to the Department. The complainant must present the Department with clear and verifiable evidence that supports the basis for the direct filing, except as in subdivision (a)(7).

[Authority cited: Section 221.1 and 33031, Education Code; and Section 11138, Government Code.] [Reference: Sections 200 and 220, Education Code; Sections 11135, 11136, and 11138, Government Code; 34 CFR 106.8; and 34 CFR 299.10(a)(2).]

4651. Notification.

When the Department receives a complaint requesting direct State intervention, the Department shall determine whether the complaint meets one or more of the criterion specified in Section 4650 for direct State intervention and shall immediately notify the complainant by first class mail of the determination to accept the complaint without a local educational agency investigation and/or Decision. If the complaint is not accepted, it shall be referred to the local educational agency for local investigation, or referred to another agency pursuant to Section 4611.

[Authority cited: Sections 221.1 and 33031, Education Code; and Section 11138, Government Code.] [Reference: Sections 200 and 220, Education Code; Sections 11135, 11136 and 11138, Government Code; 34 CFR 106.8; and 34 CFR 299.10(a)(2).]

Article 7. State Investigation Procedures**4660. Department Resolution Procedures.**

- (a) When the Department determines that direct State intervention is warranted pursuant to any provision of Section 4650, the following procedures shall be used to resolve the issues of the complaint:
- (1) The Department shall consider alternative methods to resolve the allegations in the complaint.
 - (2) If both parties request mediation, the Department shall offer to mediate the dispute which may lead to a state mediation agreement.
 - (3) The Department shall conduct an investigation, including an on-site investigation if necessary, into the allegations in the complaint unless a settlement agreement has been reached between the parties that disposes of all the issues in the complaint.

[Authority cited: Sections 200, 221.1 and 33031, Education Code; and Section 11138, Government Code.] [Reference: Sections 11135, 11136 and 11138, Government Code; 34 CFR 106.8; and 34 CFR 299.10(a)(2).]

4662. Investigation Timeline.

- (a) Each party in the dispute shall be sent written notification by the Department of the name(s) of the investigator(s) and the investigation date(s), if known. The notice shall explain the investigation process.
- (b) An investigation will be completed within 60 days after receiving a request for direct intervention or an appeal request, unless the parties have agreed to extend the time lines. The Department may grant extensions for the investigation if exceptional circumstances exist that constitute good cause with respect to the particular complaint, and provided that the complainant is informed of the extension and the reasons therefore and provided that the facts supporting the extension are documented and maintained in the complaint file.

[Authority cited: Sections 221.1 and 33031, Education Code; and Section 11138, Government Code.] [Reference: Sections 200 and 220, Education Code; Sections 11135, 11136, and 11138, Government Code; 34 CFR 106.8; and 34 CFR 299.10(a)(2).]

4663. Department Investigation Procedures.

- (a) The investigator(s) shall request all documentation and other evidence regarding the allegations in the complaint.
- (b) The investigation shall include an opportunity for the complainant, or the complainant's representative, or both, to present the complaint(s) and evidence or information leading to evidence to support the allegations of non-compliance with state and federal laws and/or regulations.
- (c) Refusal by the complainant to provide the investigator with documents or other evidence related to the allegations in the complaint, or to otherwise fail or refuse to cooperate in the investigation or engage in any other obstruction of the investigation may result in the dismissal of the complaint because of a lack of evidence to support the allegations.
- (d) Refusal by the local educational agency to provide the investigator with access to records and/or other information related to the allegation in the complaint, or to otherwise fail or refuse to cooperate in the investigation or engage in any other obstruction of the investigation may result in a finding based on evidence collected that a violation has occurred and may result in the imposition of a remedy in favor of the complainant.

[Authority cited: Sections 221.1 and 33031, Education Code; and Section 11138, Government Code.] [Reference: Sections 200 and 220, Education Code; Sections 11135, 11136 and 11138, Government Code; 34 CFR 76.1 and 106.8; and 34 CFR 299.10(a)(2).]

4664. Department Investigation Report.

- (a) An investigation report shall be issued. The investigation report shall include the following:
 - (1) A summary of the allegations in the complaint;
 - (2) A description of the general procedures of the investigation;
 - (3) Citations of applicable law and regulations;
 - (4) Department findings of facts;
 - (5) Department conclusions;
 - (6) LEA required actions, if applicable;
 - (7) LEA recommended specific actions, if applicable;
 - (8) Time line for corrective actions, if applicable; and
 - (9) Notice that any party may request reconsideration of the Department's report from the Superintendent of Public Instruction within 35 days of the receipt of the report.
 - (10) For those programs governed by Part 76 of Title 34 of the Code of Federal Regulations, the parties shall be notified of the right to appeal to the United States Secretary of Education.
- (b) An investigation report shall be mailed to the parties within 60 days from the conclusion of the investigation.

[Authority cited: Sections 221.1 and 33031, Education Code; and Section 11138, Government Code.] [Reference: Sections 200 and 221, Education Code; Sections 11135, 11136 and 11138, Government Code; 34 CFR 106.8; and 34 CFR 299.10(a)(2).]

4665. Discretionary Reconsideration of Department Investigation Report.

- (a) Within 35 days of receipt of the Department investigation report, either party may request reconsideration by the Superintendent. The request for reconsideration shall designate the finding(s), conclusion(s), or corrective action(s) in the Department's report to be reconsidered and state the specific basis for reconsidering the designated finding(s), conclusion(s) or corrective action(s). The request for reconsideration shall also state whether the findings of fact are incorrect and/or the law is misapplied.
- (b) Within 35 days of the receipt of the request for reconsideration, the Superintendent or his or her designee may respond in writing to the parties modifying the specific finding(s), conclusion(s), or corrective action(s) for which reconsideration is requested, or denying the request for reconsideration. Pending the Superintendent's reconsideration, the Department report remains in effect and enforceable.
- (c) Appeals by private agencies regarding Child Care Food Programs shall be made to the State Office of Administrative Hearings in accordance with applicable laws and regulations.
- (d) Appeals from investigations of complaints involving Child Development contractors, whether public or private, shall be made to the Superintendent of Public Instruction as provided in subsection (a) except as otherwise provided in Division 19 of Title 5 of the Code of California Regulations.
- (e) For those programs governed by Part 76 of Title 34 of the Code of Federal Regulations, the parties shall be notified of the right to appeal to the United States Secretary of Education.

[Authority cited: Sections 200, 221.1 and 33031, Education Code; and Section 11138, Government Code.] [Reference: Sections 200 and 220, Education Code; Sections 11135, 11136 and 11138, Government Code; 34 CFR 76.1 and 106.8.]

Article 8. Enforcement – State Procedures to Effect Compliance

4670. Enforcement.

- (a) Upon determination that a local agency violated the provisions of this chapter, the Department shall notify the local agency pursuant to Section 4664(b) that it must take corrective action to come into compliance. If corrective action is not taken, the Department may use any means authorized by law to effect compliance, including, but not limited to:
 - (1) The withholding of all or part of the local agency's relevant state or federal fiscal support in accordance with state or federal statute or regulation;
 - (2) Probationary eligibility for future state or federal support, conditional on compliance with specified conditions;
 - (3) Proceeding in a court of competent jurisdiction for an appropriate order compelling compliance.
- (b) No decision to curtail state or federal funding to a local agency under this chapter shall be made until the Department has determined that compliance cannot be secured by other means.
- (c) If the Department determines that a Child Development Contractor's Agreement shall be terminated, the procedures set forth in Sections 8257(d) or 8400 et seq. of

the Education Code and the regulations promulgated pursuant thereto (Chapter 19 of Title 5, CCR, commencing with Section 17906), shall be followed.

- (d) If the Department determines that a local educational agency has failed to comply with any provision of Sections 49550 through 49554 of the Education Code, the Department shall certify such noncompliance to the Attorney General for investigation pursuant to Section 49556 of the Education Code.

[Authority cited: Sections 200, 221.1 and 33031, Education Code; and Section 11138, Government Code.] [Reference: Section 49556, Education Code; Sections 11135, 11136 and 11138, Government Code; and 34 CFR 76.783 and 106.8.]